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INFO RUEHHM/AMCONSUL HO CHI MINH 5632
RUCNASE/ASEAN MEMBER COLLECTIVE
RHHMUNA/USPACOM HONOLULU HI

UNCLAS SECTION 01 OF 05 HANOI 000184

SENSITIVE
SIPDIS

STATE FOR EAP/MLS AND EEB/TPP/IPE JURBAN
STATE FOR EEB/TPP/IPE FOR HALLOCK, WATTS, AND KEAT
STATE ALSO PASS USTR DBISBEE AND RBAE
4430/MAC/AP/OPB/VLC/HPPHO

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [ECON](#) [VM](#)

SUBJECT: VIETNAM SHOULD REMAIN ON THE 2009 SPECIAL 301 WATCH LIST

REF: (A) STATE 8410 (B) HANOI 032

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¶1. (SBU) Summary: The Government of Vietnam (GVN) has continued to take significant steps to implement an effective legal regime to protect intellectual property rights (IPR), reduce IPR violations and raise awareness. However, enforcement remains weak, piracy and counterfeiting are rampant and several key obligations remain unfilled. Vietnam's goals of participating in the Generalized System of Preferences (GSP) program and attracting continued high levels of foreign direct investment should motivate the GVN to continue to improve its IPR enforcement record. In the meantime, Post recommends Vietnam's continued placement on the Special 301 Watch List. End Summary.

IPR PROGRESS

¶2. (U) Two years after joining the WTO, Vietnam has continued efforts to develop a modern IPR legal regime and meet its obligations under the U.S.-Vietnam Bilateral Trade Agreement (BTA) and WTO Trade-related Aspects of Intellectual Property Rights (TRIPs). Since the Mission's 2008 Special 301 submission, Vietnam has continued to strengthen its IPR legal framework, modestly improved IPR enforcement, formed a partnership to protect software copyrights and launched a Department of State-funded outreach program to raise public awareness of IP in Vietnam. Stakeholders report that Vietnam's overall IPR situation is the same, if slightly improved, from 2008.

¶3. (U) Vietnam has undertaken significant efforts in recent years to promulgate a legal framework for protection of IP rights. In 2009, the GVN is expected to amend the 2005 Law on Intellectual Property, updating areas related to copyrights, trademarks, manufacture and distribution of optical discs, and border control measures related to infringing goods. Yet, critical legal documents remain outstanding - notably the long-awaited revision to Vietnam's criminal code to update its IPR provisions. In February 2008, the GVN issued a stopgap measure, Joint Circular 01, which declares that IP infringement merits criminal prosecution if pursued on a "commercial scale and for commercial purposes." The circular moved Vietnam a step closer to meeting its TRIPs obligations.

¶4. (U) The National Assembly was expected to ratify the criminal code revision in May 2009, codifying in Vietnamese law criminal penalties for commercial-scale IP infringement. The Embassy recently learned, however, that the date for ratification could slide to late 2009, leaving promulgation for 2010. While the new law would fill an important gap in Vietnam's IPR legal foundation, industry observers have expressed concern that the law's proposed fines and penalties, revealed in several drafts in 2008, are still

too weak to deter committed IP infringers.

15. (U) In December 2008, Prime Minister Nguyen Tan Dung issued a promising new directive (No. 36/2008/CT-TTg) instructing ministers and provincial department heads to draft detailed plans to increase copyright protection in Vietnam's business and service sectors, prevent the import and export of items that violate copyright laws, particularly optical discs, and introduce "strict punishment" for organizations and individuals that circulate pirated goods. The directive also orders all Vietnamese universities and professional schools to introduce lectures on intellectual property rights, which could prove particularly useful in helping to raise IPR awareness in Vietnam.

16. (U) In August 2008, in an effort to combat software piracy, the Ministry of Culture, Sports and Tourism (MOCST) and the Vietnam Software Association (VINASA) joined forces with the Business Software Alliance (BSA) to create the "Partnership in Protection of Software Copyrights." The collaboration aims to decrease software piracy through public awareness campaigns, inspections and stricter penalties for violations. The Partnership has been running public service announcements in several of Vietnam's largest print and online newspapers warning against software piracy, and authorities backed up the campaign with a crackdown on several high-profile infringers.

17. (U) In December 2008, the Drug Administration of Vietnam (DAV) agreed, after urging by the USTR and U.S. industry, to modify its internal procedure and grant five years of data exclusivity to new pharmaceuticals entering the Vietnamese market, in line with Vietnam's BTA and TRIPS obligations. The Mission is currently waiting to learn how the DAV will implement the new rule, including whether data exclusivity will be automatic, comprehensive, retroactive and, as industry group PhRMA noted, "without procedures and formalities."

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VIETNAMESE ASSOCIATIONS INCREASE VISIBILITY

18. (U) In October 2008, the Recording Industry Association of Vietnam (RIAV) filed its largest civil lawsuit to date against Vietnamese internet service provider FPT and Nokia for music copyright violation, seeking compensation of more than VND 50 billion. At a press conference, RIAV presented evidence that Nokia had offered cell phone buyers a promotional package that directed customers to an FPT-run website that offered 1,000 songs and ringtones. RIAV also accused FPT of offering 10,000 unlicensed downloadable music files and streaming infringing content. RIAV said Nokia has admitted wrongdoing, but that neither FPT nor Nokia have shown sufficient "good will in negotiations," prompting RIAV to proceed with civil court proceedings. While no court date has been set, RIAV anticipates the trial will take place in early 2009, and serve as a deterrent and means to raise IPR protection public awareness.

19. (U) Vietnamese Public Television aired a number of IPR-related programs, including a game show on IP rights. IPR agencies organized a number of workshops, panels and public forums to help increase IP awareness. The Copy Office of Vietnam (COV) website regularly updates information on copyright legislation, including a copyright registration database. The GVN also sponsored a number of IPR awareness events on World IP Day, April 26, 2008.

110. (U) Due to heightened awareness of IP, individuals and firms in Vietnam have become increasingly assertive about protecting their rights. In 2008, the COV reports issuing 4,992 copyright certificates, a 55 percent increase over 2007. NOIP reports it received 3,484 patent applications for inventions, a 13 percent increase over last year.

111. (U) Copyright associations also continued to expand their reach. The Vietnam Literature Copyright Center (VLCC) collected VND 300,000 million (\$17,000) in royalties in 2008, while The Vietnam Center for Protection of Music Copyright (VCPMC) collected VND 15

billion (USD 833,000) worth of fees last year.

¶12. (U) The Vietnam Center for Protection of Music Copyrights represents both Vietnamese and foreign songwriters and composers and is a member of the International Confederation of Societies of Authors and Composers (known by its French acronym CISAC). The branch of VCPMC in southern Vietnam, enabled by support from the Departments of Culture, Sports, and Tourism in 24 provinces, reported major increases in copyright royalties collected from TV and radio stations, live provinces, CDs, karaoke, hotels, restaurants, bars, and websites.

IPR CHALLENGES

¶13. (U) Despite these developments, IP enforcement in Vietnam remains weak and violations are rampant. Several factors continue to undermine proper IPR enforcement in Vietnam. First is the government's reliance on administrative measures to combat IP infringement. GVN officials tell us just 1 percent of all IP infringement cases in Vietnam are prosecuted under existing criminal statutes. A second complicating factor is the sheer number of entities involved in IP enforcement, with no less than eight ministries and agencies responsible for intellectual property in Vietnam. To help streamline enforcement, the GVN has formed an interagency committee (Standing Committee 127) with representatives of all agencies involved in IPR protection. However, despite the new committee and the National Office of Intellectual Property Rights' (NOIP) stated goal to create a "one-stop shop" for rights holders, the task of sorting out overlapping jurisdictions and completing the requisite procedural requirements remains confusing and time-consuming.

¶14. (U) Industry estimates place rates of pirated optical discs in Vietnam at 95 percent and pirated software at 83 percent. Anecdotal evidence supports these estimates. Hanoi, Ho Chi Minh City (HCMC) and most other cities are rife with pirated DVDs, CDs, and VCDs. While local media producers in HCMC have recently reported increased availability of legitimate, locally-recorded and produced Vietnamese music CDs, market access barriers continue to limit the availability of legitimate imports, further complicating efforts to combat piracy. In 2007, in an effort to tackle the problem, the COV, an agency under the MOCST, initiated the drafting of new optical disc legislation that would regulate the domestic production, export, import and circulation of all optical discs, but this work remains unfinished.

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¶15. (U) The costs of IPR infringement remain high. The International Intellectual Property Alliance (IIPA) pegged 2008 trade losses from pirated software in Vietnam at \$123 million. Although software piracy rates decreased by 9 percent from 2004, estimated trade losses over the period increased by more than \$90 million due to the rapid proliferation of personal computers in Vietnam. While the GVN issued a directive in 2007 aimed at lowering the rate of software infringement to the regional average (Decision No. 51), raids have thus far been too infrequent and the fines too minimal to reduce piracy significantly.

TECHNICAL ASSISTANCE AND RAISING AWARENESS

¶16. (U) Vietnam continued to receive IPR-related technical assistance from a number of foreign donors in 2008, including the Government of France, the European Patent Office (EPO), the World Intellectual Property Organization (WIPO), USAID and the U.S. Patent and Trademark Office (USPTO).

¶17. (U) In 2009, the GVN will continue to require technical assistance to improve its IPR enforcement capacity. Six GVN members will attend a weeklong seminar on IPR enforcement at the ILEA Academy in Bangkok in April 2009. In addition, the Mission hopes to collaborate with the Bureau of International Narcotics and Law Enforcement (INL) to offer Vietnam a technical capacity-building project to enhance IPR enforcement.

¶18. (U) Enforcing IP law in Vietnam is complicated by a lack of understanding among retailers of their legal obligations and the economic impact upon the IP owners from the sale of pirated or counterfeit goods. This is not necessarily limited to small mom-and-pop establishments; GVN officials tell us that some of Vietnam's largest retailers routinely peddle infringing goods. To combat this problem, Post is engaging with the Market Management Bureau to develop an IPR Outreach booklet for distribution in May 2009 in areas with high rates of infringing goods. The booklet, funded jointly by the Department of State and Post, will describe how to identify a fake or pirated good, explain the legal and economic consequences of peddling such wares, suggest locations where vendors can obtain legitimate goods for sale, and note why IP protection is important to Vietnam and its citizens.

INTERNATIONAL AGREEMENTS

¶19. (U) In 2006, Vietnam fulfilled its BTA obligations by joining five key international IP conventions. After completing procedures to join the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Vietnam officially joined the Convention on March 1, 2007. The Mission continues to urge Vietnam to join the 1996 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), but the GVN has continued to defer action on those agreements.

IPR LEGISLATIVE REFORMS IN 2008

¶20. (U) The GVN reported the following IPR-related legislative reforms in 2008 and early 2009:

- Joint Circular No. 01/2008/TTLT-TANDTC-VKSNDTC-BCA-BTP guiding penalties for infringement of intellectual property rights, February 2008;
- Ordinance on the Handling of Administrative Violations, which revises the fine ceiling to align it with Vietnam's Law on Intellectual Property;
- Joint Circular No. 02/2008/ TTLT-TANDTC-VKSNDTC-BVHTTDL-BKHCH-BTP guiding regulations for IPR dispute settlement, April 3, 2008;
- Prime Minister's Directive on Strengthening Management and Protection of Copyrights and Related Rights (No. 36/2008/CT-TTg), December 31, 2008;
- Circular No. 29/2009/TT-BTC, dated February 10, 2009, revising and supplementing Circular 166, February 12, 1998;
- Decision No. 515/QĐ-TCHQ, establishing an IPR Enforcement System to streamline procedures and link central and provincial customs departments, February 22, 2008;
- Decision 916/QĐ-TCHQ, establishing procedures for the inspection

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of exports and imports, March 31, 2008;

- Decision No. 2808/QĐ-TCHQ, on the operations manual for IPR Customs Enforcement, December 31, 2008;
- A joint circular drafted by MOCST, MOST, MOF and MPI regarding financial support for the purchase of legitimate software and guiding the collection and distribution of royalties;
- Circular 12/2008/TT-BCT, outlining procedures for market management bodies to take jurisdiction of, and resolve administrative breaches in, the intellectual property sector.
- Prime Ministerial Directive No. 28/2008/CT-TTg ordering "urgent action" against counterfeit goods and low quality products, September 8, 2008.

¶21. (U) The GVN reported the following enforcement efforts in 2008:

- MOST/NOIP: processed 154 cases, including 118 trademark infringement cases, 32 industrial design cases, three patent infringement cases and one unfair competition case; destroyed 54,969 trademark-infringing goods and 95 patents infringing goods. Total fines were approximately VND 800 million (\$45,000).
- The Market Management Bureau (MMB), Vietnam's largest IPR administrative enforcement agency, reported 2,575 IPR infringement investigations, including 2,195 trademark cases, 404 industrial design cases, six geographical indication cases, four unfair competition cases and two trade name cases. Total fines were nearly VND 8 billion (\$4.4 million).
- Through February 2009, the Vietnam General Department of Customs received 26 requests to inspect exports and imports for IPR infringement. The goods were trademarked Nokia, Nike, Seiko, HP, Epson, Smirnoff, Gucci, Casio, Ensure, Oral-B, New Era, Gillette, and Proctor & Gamble. Customs reports seizing goods on ten occasions, suspending clearance on five occasions, identifying infringing goods worth VND 200 million (\$11,500) and imposing fines worth VND 400 million (\$23,000). Infringing goods included cell phones, cell phone parts and Benson & Hedges cigarettes.
- The Ministry of Public Security's Department of Economic Police reports investigating and seizing infringing goods in 76 cases, focusing on the following product categories: food, clothing, cosmetics, pharmaceuticals and electronic parts.
- On March 29, 2008, MPS arrested a group smuggling counterfeit Viagra and Cialis across the Chinese border to Lang Son Province en route to Hanoi, HCMC, Bac Ninh and Bac Giang. Two people were sentenced to 40 months in prison.
- In October 2008, MPS initiated criminal proceedings against a group producing fake versions of the drug Rovanten; and, in September 2008, against suspects producing and distributing fake fertilizer.
- In HCMC, MPS investigated 20 IPR infringement cases, initiating criminal proceedings in two cases; imposing administrative fines in one case, with transfer of 15 cases to district and commune economic police.
- The MOCST Inspectorate processed 20 software copyright infringement cases; destroyed 2,000 illegal copies of infringing software; and seized and destroyed 2,364 infringing books, 953,477 videocassettes and 236,364 disc cases.
- The MOCST ordered seven internet websites, including 24h.com.vn, socbay.cpm.vn, zing.vn, bongdaso.com, vnmedia.vn, clip.vn and baobongda.com.vn to remove or cease broadcasting infringing content. National internet service provider FPT paid VND 20 million (\$1,150) in fines for allegedly allowing an affiliated website to broadcast pirated content. Total fines were VND 255 million (\$14,500).
- The Copyright Office of Vietnam (COV) processed 52 copyright infringement cases, of which they settled 30, and transferred the remainder to MOCST.
- In Dong Nai Province, the Department of Science and Technology (DOST) reports investigating several hundred establishments, fining 58 for industrial property infringements. Total fines were not reported.

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LEGAL UPDATES EXPECTED IN 2009

¶22. (U) The GVN expects to issue the following IPR-related legislation in 2009:

- Revision of IPR provisions in the Criminal Code;
- Revision of the 2005 Law on Intellectual Property;
- Decree on the Handling of Administrative Violations Related to Copyrights and Related Rights to introduce compatibility with the revised ordinance on the handling of administrative violations;
- A joint circular drafted by MOCST, MOST, MOF and MPI regarding financial support for the purchase of legitimate software;
- Decree to regulate optical disk management and distribution in Vietnam (COV);

CONCLUSION AND RECOMMENDATION

¶23. (SBU) Despite continuing progress, Vietnam will continue to grapple in the near term with the challenge of reducing the massive scale of IPR violations. GVN authorities, including at the highest levels, have demonstrated their understanding of the problem and expressed their resolve to protect and enforce IP rights. The GVN, moreover, has shown a willingness to cooperate with the United States and other trading partners to address its serious IP problems and we expect those efforts to continue in 2009. Vietnam's BTA and WTO/TRIPS commitments provide us with strong tools for engaging the GVN on IPR enforcement, and the Trade and Investment Framework Agreement (TIFA) also provides a useful forum.

¶24. (SBU) On the legislative front, Vietnam's forthcoming criminal code revision will fill gaps in Vietnam's IPR legal foundation by providing rights holders with multiple remedies for IP infringements -- administrative, civil and criminal. The most significant remaining challenge lies in building the capacity and improving the efficacy of Vietnam's enforcement and judicial systems. Vietnam's desire to participate in the GSP preference program and attract continued high levels of foreign direct investment should motivate the GVN to continue to improve its IPR enforcement record. With additional resources and time to implement its IPR legislative framework, the Mission expects Vietnam to develop a more consistent track record of IPR enforcement. In the meantime, we recommend Vietnam's continued placement on the Special 301 Watch List.

¶25. (U) This message was coordinated with ConGen Ho Chi Minh City.

MICHALAK